

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FRANK FISCHER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:05-cv-763-MEF
)	
SYSCO FOOD SERVICES OF)	
CENTRAL ALABAMA, INC., <i>et. al.</i> ,)	
)	
Defendants.)	

ORDER

This cause is before the Court on Plaintiff's Motion to Remand (Doc. # 27) and Plaintiff's Motion to Stay (Doc. # 33).

This case was originally filed in the Circuit Court of Montgomery County, Alabama on June 30, 2005 and was removed to this Court on August 10, 2005. In the state court complaint, Plaintiff Frank Fischer alleges three counts against his former employer, Defendant Sysco Food Services of Alabama, Inc. (hereinafter "Sysco"). Count One seeks benefits under the Alabama Worker's Compensation Act for injuries sustained in an on-the-job accident. Count Two is a retaliatory discharge claim brought pursuant to the Alabama Workers' Compensation Act. Count Three alleges violation of the federal Age Discrimination in Employment Act and Alabama Code §§ 25-1-20 through 25-1-29.

In his motion to remand, Fischer states that Counts One and Two are non-removable pursuant to 28 U.S.C. § 1445(c). Section 1445(c) provides that "[a] civil action in any State court arising under the workmen's compensation laws of such State may not be removed to

any district court of the United States.” 28 U.S.C. § 1445(c). *See also Reed v. Heil Co.*, 206 F.3d 1055, 1058 (11th Cir. 2000). In its Response to Plaintiff’s Motion to Remand (Doc. # 32), Defendant Sysco agrees that Counts One and Two should be remanded.

Accordingly, it is hereby ORDERED that

1. Plaintiff’s Motion to Remand (Doc. # 27) is GRANTED.
2. Counts One and Two of the complaint are REMANDED to the Circuit Court of Montgomery County, Alabama. Count Three will remain in this Court.
3. The Clerk is DIRECTED to take appropriate steps to effect the remand.
4. Plaintiff’s Motion to Stay (Doc. # 33) pending ruling on the motion to remand (Doc. # 33) is DENIED AS MOOT.

DONE this the 31st day of July, 2006.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE